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Of Attorneys for Plaintiff AmeriTitle, Inc.

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

AMERITITLE, INC., an Oregon corporation,

Plaintiff,

v.

GILLIAM COUNTY; FRANK
BETTENCOURT, in his official capacity as
Gilliam County Commissioner; MICHAEL
WEIMAR, in his official capacity as Gilliam
County Commissioner; and PATRICIA
SHAW, in her official capacity as Gilliam
County Judge,

Defendants.

Civil No. 2:09-cv-318 SU

**PLAINTIFF'S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

(Request for Oral Argument)

Pursuant to Local Rule 7.1, the parties made a good faith effort through personal and telephone conferences to resolve the dispute and have been unable to do so.

Pursuant to Federal Rule of Civil Procedure 56, Plaintiff AmeriTitle, Inc. ("AmeriTitle") moves for partial summary judgment on the following issues asserted by AmeriTitle in the Complaint:

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1. As a condition for preferential tax treatment under the Oregon Enterprise Zone Act (the “Act”), Gilliam County included a requirement that Pebble Springs Wind, LLC (“Pebble Springs”) give a mandatory 10 percent bid preference to “local contractors” (referred to herein as the “Local Contractor Requirement”). On its face, the Local Contractor Requirement violates the Commerce Clause in the United States Constitution (the “Commerce Clause”) because, without any legitimate governmental purpose, it affirmatively favors “local” businesses at the expense of “non-local” businesses.

2. As applied to the undisputed facts of this case, the Local Contractor Requirement violates the Commerce Clause because, without any legitimate governmental purpose, it has and will continue to affirmatively discriminate against “non-local” businesses in favor of “local” businesses.

3. The Local Contractor Requirement violates the Equal Protection Clause in the Fourteenth Amendment to the United States Constitution (the “Equal Protection Clause”) because, without any rational basis, it facially discriminates against similarly-situated “non-local” businesses in favor of “local” businesses.

4. As applied to the undisputed facts of this case, the Local Contractor Requirement violates the Equal Protection Clause because, without any rational basis, it has and will continue to discriminate against similarly-situated “non-local” businesses in favor of “local” businesses.

5. By including the Local Contractor Requirement in the Pebble Springs SIP Agreement, Gilliam County exceeded its authority under the Oregon Enterprise Zone Act and acted contrary to an express prohibition in its implementing regulations.

6. Gilliam County’s inclusion of the Local Contractor Requirement in the Pebble Springs SIP Agreements constitutes “improper means,” an element of AmeriTitle’s claim for intentional interference with prospective economic relations.

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There is no genuine issue of material fact with respect to the issues set forth above, and AmeriTitle is entitled to summary judgment as a matter of law. In support of this motion, AmeriTitle relies upon the Memorandum of Law, the Concise Statement of Material Facts, the Declaration of Gretchen Barnes and the Declaration of Craig Trummel filed concurrently herewith, and the pleadings on file herein.

DATED this 23rd day of June 2009.

CABLE HUSTON BENEDICT HAAGENSEN &
LLOYD LLP



G. Kevin Kiely, OSB No. 833950
Carla Scott, OSB No. 054725
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Of Attorneys for Plaintiff AmeriTitle, Inc.

CERTIFICATE OF SERVICE


I hereby certify that I served the foregoing **PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT** on:

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Of Attorneys for Defendants Gilliam County, Frank Bettencourt, Michael Weimar and Judge Patricia Shaw

- ☒ **ELECTRONIC MAIL – CM/ECF** notice of electronic filing.
- ☒ by **MAILING** a full, true and correct copy thereof in a sealed, postage-paid envelope, addressed as shown above, and deposited with the U.S. Postal Service at Portland, Oregon, on the date set forth below.
- ☐ by causing a full, true and correct copy thereof to be **HAND-DELIVERED** to the party, at the address listed above on the date set forth below.
- ☐ by causing a full, true and correct copy thereof by **ELECTRONIC MEANS** to the party, at the party's last known email address listed above on the date set forth below.
- ☐ by **FAXING** a full, true and correct copy thereof to the party, at the fax number shown above, which is the last-known fax number for the party's office, on the date set forth below.

DATED this 23rd day of June 2009.



Carla Scott, OSB No. 054725
Of Attorneys for Plaintiff AmeriTitle, Inc.